

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ALI, INC.,)	
)	
Plaintiff)	
)	
v.)	Civil No. 94-25-P-C
)	
ALAN FISHMAN, et al.,)	
)	
Defendants)	

ORDER

Defendants Harvey Prawer and Gilbert Prawer (the "Prawers") seek a court order compelling the production by the plaintiff, ALI, Inc. ("ALI"), of its Servicing Agreement with Fleet Management & Recovery Corporation ("FMRC"), the entity that ALI retained to service the loan obligations now at issue in this case, in the belief that the agreement evidences a champertous relationship between ALI and FMRC in violation of 17-A M.R.S.A. § 516 and Maine common law.¹

Assuming the agreement evidences such a relationship, the Prawers plan to use it in support of a motion to dismiss this action. *See Hinckley v. Giberson*, 129 Me. 308, 311 (1930). They have offered to take a single copy of the agreement subject to a confidentiality order.

ALI has objected to any production of the Servicing Agreement, claiming that it is irrelevant even for discovery purposes and that it contains such sensitive commercial information as to render any protective order inadequate. The plaintiff did offer, however, to submit a copy of the

¹ The Prawers have also sought production of the Servicing Agreement on the ground that it is relevant to FMRC's claimed status of attorney-in-fact for ALI. I have previously denied production of the agreement on this ground, insofar as ALI offered to provide the defendants with a copy of the power of attorney that establishes that status. *See* Report of Hearing and Order Re: Discovery Dispute (Docket No. 55).

agreement to the court for its *in camera* inspection. Accordingly, I ordered that the plaintiff submit a true copy of the Servicing Agreement for that purpose and indicated that, after such inspection, a ruling would be made concerning whether and under what conditions, if any, the agreement should be produced. *See* Report of Hearing and Order Re: Discovery Dispute (Docket No. 55).

I have now carefully reviewed the entire Servicing Agreement with an eye to whether any of its content, alone or in combination, supports a claim of champerty. I have also reviewed the Prawers' written submission on this issue.² *See* Memorandum of Prawers on Discovery Dispute (Docket No. 53). I find that nothing about the Servicing Agreement could reasonably support a claim of champerty under Maine statutory or common law, so as to warrant its disclosure on this basis. *See* 17-A M.R.S.A. 516; *Burnham v. Heselton*, 84 Me. 578, 587-88 (1892).

Champerty is an ancient common law doctrine, which has since been codified in Maine. *See* 17-A M.R.S.A. 516. A champertous arrangement is essentially one in which a person without an interest in another's litigation undertakes to carry on the litigation at his own expense, in whole or in part, or to aid in the litigation, in consideration of receiving a part of the proceeds of the litigation in the event of success. *See, e.g., Burnham*, 84 Me. at 588; 14 C.J.S. *Champerty and Maintenance*, 2(a) at 146 (1991). The gist of the offense of champerty is that the intermeddler has entered into the arrangement with the very intent of deriving a benefit from another's litigation. *See* 17-A M.R.S.A. 516; *Burnham*, 84 Me. at 588; 14 C.J.S. 2(a) at 146. The purpose for the law's proscription of champerty is to prevent officious intermeddling in litigation and the fomenting of useless and vexatious lawsuits. 14 C.J.S. 2-3 at 147-48.

The Servicing Agreement evidences no champertous relationship here. What it indicates is that ALI and FMRC entered into an arrangement for FMRC to provide a full range of servicing for

² I have considered the Prawers' written submission even though the local rules dictate that such filings are not to be made unless requested by the court. *See* Local R. 18(e). I find that a written response by ALI is unnecessary to satisfactorily resolve the issue, having thoroughly reviewed the Servicing Agreement and controlling law on my own. *See id.*

the various loan obligations held by ALI in exchange for monthly compensation. No reading of the agreement allows for the conclusion that it was entered into or maintained by the parties for the intended purpose of FMRC's deriving a benefit from ALI's litigation, though assistance with ALI's litigation may be one of the many services provided by FMRC. Rather, the Servicing Agreement constitutes a comprehensive business arrangement in which FMRC provides servicing for ALI's loan obligations in exchange for regular monetary payments. Such a contractual arrangement, founded on consideration other than the proceeds of litigation, precludes a finding of champerty. *See, e.g., Martin v. Morgan Drive Away, Inc.*, 665 F.2d 598, 605-06 n.6 (5th Cir.), *cert. dismissed*, 458 U.S. 1122 (1982); *Amerifirst Bank v. Bomar*, 757 F. Supp. 1365, 1372 (S.D. Fla. 1991); 14 C.J.S. 2(a) at 146. In short, this simply is not the type of situation to which the doctrine of champerty was directed. 14 C.J.S. 2-3 at 147-48.

Accordingly, I conclude that the Servicing Agreement need not be produced for the sole remaining reason it is sought, namely, that it evidences a champertous arrangement between ALI and FMRC and will support a motion to dismiss this action. The motion to compel is therefore **DENIED.**

The Clerk shall retain the Servicing Agreement under seal so that it may be reviewed in the event reconsideration by a district judge of this court is sought pursuant to 28 U.S.C. 636(b)(1)(A), or in the event of appeal.

SO ORDERED.

Dated at Portland, Maine this 7th day of June, 1994.

David M. Cohen
United States Magistrate Judge